American Bankers Association®

Memo

Date: October 10, 2017

To: Members of the Committee on Financial Services

From: James Ballentine, Executive Vice President, Congressional Relations & Political Affairs

Re: ABA's Views on Bills Scheduled for October 11, 2017 Full Committee Mark-Up

On behalf of the members of the American Bankers Association (ABA), I am writing to share our views on several bills scheduled for consideration before the House Financial Services Committee on Wednesday, October 11, 2017. The ABA is pleased to see such a diverse set of regulatory reform proposals -- several of which reflect priorities outlined in our Blueprint for Growth -- come before the Committee. We look forward to working with the Committee and the members of the House as these bills go through the legislative process.

H.R. 1116, the Taking Account of Institutions with Low Operation Risk Act of 2017 (TAILOR Act). This bipartisan legislation introduced by Rep. Scott Tipton (CO) directs Federal bank and credit union regulators, when taking a regulatory action, to consider the risk profile and business model of an institution or class of institutions involved. If taking that regulatory action is not necessary or appropriate for the institution(s) given the costs and complexity involved, the regulator is directed to "tailor" that regulatory action to limit its compliance impact, cost and other burdens. In its simplest terms, H.R. 1116 merely directs regulators to exercise common sense, applying rules (and the burdens that come with them) only where appropriate while cutting back those burdens where it does not.

It is clear that legislation is needed to address the mounting burdens of regulation that, in the aggregate, have stifled the ability of our nation's financial institutions to serve the needs of consumers and small businesses, as well as local and regional economies. While regulation is often a fact of life for such institutions, the indiscriminate application of many of these rules to institutions whose business models and risk levels do not warrant it adds little to overall safety and soundness and much to the costs of financial products in this country. And, at its extreme, such over-regulation threatens the viability of many smaller institutions that act as the lifeblood of communities across this country. **The ABA supports H.R. 1116.**

H.R. 2121, the Pension, Endowment, and Mutual Fund Access to Banking Act. This bipartisan bill, as introduced by Representatives Keith Rothfus (PA), Bill Foster (IL) and Randy Hultgren (IL) is straightforward legislation that would allow custody banks to exclude central bank deposits from the denominator of the supplementary leverage ratio. Custody banks, and banks that provide custody services, occupy a critically important space in our financial system. While the relief is limited to custody banks, ABA views H.R. 2121 as a first step in providing relief for all banks who engage in custody activities. The bill recognizes that the rulemakings implemented post-financial crisis and post-Dodd Frank Act are a poor fit for custody activities resulting in hundreds of millions of dollars of unproductive spending with little impact on financial stability. H.R. 2121 provides some clarity in the rules. **The ABA supports H.R. 2121**.

H.R. 2396, the Privacy Notification Technical Clarification Act, a bipartisan bill introduced by Rep. David Trott (MI) and Financial Institutions and Consumer Credit Subcommittee Ranking Member William Lacy Clay Jr. (MO) and the substitute language, would simplify the notice requirements for financial institutions that have not changed their privacy policies. In addition to the relief provided by the FAST Act for financial institutions that only share information within the statutory exceptions, it would create a simple disclosure mechanism using the Internet for financial institutions that have not changed their privacy practices. **The ABA supports H.R. 2396**.

H.R. 2706, the Financial Institution Customer Protection Act. This legislation, as introduced by House Financial Institutions and Consumer Credit Subcommittee Chairman Blaine Luetkemeyer would dictate that federal banking agencies could not request nor order a financial institution to terminate a banking relationship unless the regulator has material reason. The legislation further states that account termination requests or orders would be required to be made in writing and rely on information other than reputational risk. We thank Chairman Luetkemeyer for his attention to this issue as he well knows that banks are in the business of providing financial services for law-abiding customers, and they share a common goal with law enforcement of maintaining the integrity of the payments system. If there is reasonable concern regarding a customer, it works best when banks work together with our regulatory agencies and law enforcement. This legislation supports that concept. **The ABA supports H.R. 2706.**

H.R. 2954, the Home Mortgage Disclosure Adjustment Act. This legislation, as introduced by Rep. Tom Emmer (MN), would provide community banks with relief from compliance burdens that are ill-suited and unnecessary for community banks.

Specifically, the bill exempts small banks and credit unions from new reporting requirements of the Home Mortgage Disclosure Act (HMDA) if they are lenders that have originated 1,000 or fewer closed-end mortgages in each of the two preceding calendar years or are lenders that have originated 2,000 or fewer open-end lines of credit (such as a typical home equity loan) in each of the two preceding calendar years. Additionally, the bill repeals the HMDA amendments included in the Dodd-Frank Act and withdraws the CFPB's rule to impose the new and modified HMDA data points scheduled to take effect in January of next year.

The pending HMDA changes were imposed after the financial crisis. Although well-intentioned, the new reporting requirements were overly broad in their coverage and have the potential to add significant cost and regulatory burden, as well as privacy concerns for customers, to small institutions which have an excellent track record of fairly and honestly serving their customers' needs.

So great is the cost of compliance with these new regulations that many smaller banks may be forced to reconsider their ability to continue to make mortgage and other covered loans. H.R. 2954 provides needed relief to keep more lending options available in the markets that these banks serve. **The ABA supports H.R. 2954.**

H.R. 3072, the Bureau of Consumer Financial Protection Examination and Reporting Threshold Act of 2017. This bipartisan legislation, introduced by Financial Institutions and

Consumer Credit Subcommittee Ranking Member William Lacy Clay Jr. (MO) and Representative Steve Stivers (OH) raises the examination threshold for institutions subject to the supervision of the Consumer Financial Protection Bureau from the current $10 billion to $50 billion. The legislation would also increase the threshold to $50 billion for institutions subject to CFPB reporting requirements. While this legislation is a substantial move in the right direction, ABA would strongly urge Congress to take a more holistic examination of the arbitrary nature of the thresholds included in the Dodd-Frank Act. **The ABA supports H.R. 3072.**

H.R. 3299, the Protecting Consumers Access to Credit Act. This bipartisan legislation introduced by Representatives Patrick McHenry (NC) and Greg Meeks (NY) would codify the "valid-when-made" doctrine, a longstanding legal principle, that if a loan is valid when it is made with respect to its interest rate, then it does not become invalid or unenforceable when assigned to another party. This common law principle has been a cornerstone of U.S. banking law for over 100 years. It provides critical legal certainty necessary for the effective and efficient functioning of the credit markets, thereby benefiting both individuals and small businesses. This doctrine was recently indirectly undermined by the Second Circuit's decision in Madden v. Midland Funding, LLC. By calling into question the "valid-when-made" doctrine, the decision has injected uncertainty into the secondary markets for consumer and commercial credit, resulting in increased costs and decreased competition. Banks depend on the ability to sell or assign the loans they originate to provide liquidity to support their lending operations and to foster their safety and soundness. We applaud Reps. McHenry and Meeks for introducing this legislation. **The ABA supports H.R. 3299.**

H.R. 3312, the Systemic Risk Designation Improvement Act of 2017. This bipartisan legislation, introduced by Chairman Blaine Luetkemeyer (MO) and a number of members on the Financial Services Committee is important and long overdue.

Under the Dodd Frank Act (DFA), an institution with $50 billion or more in consolidated assets is automatically deemed to be a "systemically important financial institution" or a "SIFI", and subject to higher levels of regulation regardless of the real "risk" it might pose to the financial system. This arbitrary size threshold – and the significant regulatory requirements that come with it – has unnecessarily ensnared many banks without cause, limiting their abilities to provide needed credit and other services to consumers, businesses and their communities.

This legislation would replace the DFA's automatic SIFI designation with a process for the Federal Reserve Board (Fed) to make a determination that an individual financial institution, or group of institutions, is systemically important and subject to enhanced supervision and prudential regulation. The Fed would make its determination by analyzing a variety of relevant measures of risk outlined in the bill, rather than being bound by the sole criterion of asset size - which taken alone is a poor measure of risk - and allow the regulators to "tailor" their supervision and reduce regulatory burdens as appropriate.

Size-only regulation is a simple shortcut means of supervising financial institutions and it is inappropriate and needlessly burdensome for many financial institutions with noncomplex operations and business models. It increases costs and reduces products and services to bank customers.

ABA believes that the most effective and value-added supervision regime is one that is risk-based and individually tailored, taking into account a wide variety of factors including size, business model, complexity of operations, and other factors relevant to the risk of its activities, products, and services. **The ABA supports H.R. 3312**.

H.R. 3857, the Protecting Advice for Small Savers Act of 2017. This legislation would repeal the Department of Labor (DOL) Fiduciary Rule, which is a deeply flawed rule that should be significantly revised or rescinded. As currently written, the Fiduciary Rule presents a difficult if not insuperable compliance challenge. It provides no clear path to compliance and has the potential for numerous regulatory pitfalls which, when paired with the Fiduciary Rule's class action enforcement mechanism, creates significant liability and litigation risks for financial institutions. **The ABA supports H.R. 3857**.

H.R. 3971, the Community Institution Mortgage Relief Act. This bipartisan legislation, introduced by Representatives Claudia Tenney (NY), Brad Sherman (CA) and Roger Williams (TX) would provide needed relief for smaller lenders with regard to escrow practices. The legislation would exempt lenders with $25 billion in assets or less from escrow requirements on Higher Priced Mortgage Loans (HPML) they hold in their portfolios and it would provide regulatory relief for small servicers, defined as those servicing 30,000 loans or fewer, by exempting them from various servicing requirements.

The important exemptions detailed in this legislation recognize the strong history of small institutions in providing high-quality mortgage servicing, even with limited staff and resources. Given their excellent track record, small servicers should be incentivized to continue to service mortgage loans. Unfortunately, under current rules, banks generally must provide escrow services for certain types of mortgage loans (subject to limited and often confusing exemptions), even to borrowers who do not want those services. There are efficiencies of scale to providing escrow services which smaller banks cannot enjoy. This, combined with compliance costs, makes it more expensive for smaller lenders to offer escrow services. The result is that all borrowers end up paying more, even those who do not want to avail themselves of escrow services.

Existing regulatory efforts to provide exemptions and other relief from escrow mandates have resulted in a complicated and confusing hodgepodge of requirements which makes compliance difficult. This legislation seeks to simplify and provide some relief—goals we support. ABA looks forward to continuing to work with the author and would urge members to **support H.R. 3971.**

We appreciate the opportunity to share our views with the Committee on measures which ABA has a formal position. We hope that those measures that ABA supports will be approved by the Committee and receive favorable consideration on the House floor.